

### **DETAILED ACTION**

Applicant's amendment, filed 11/02/2010, has been entered.

Claim 1 has been canceled.

Claims 21-24 have been added.

Claims 2-24 are pending.

Claims 7 and 9-18 have been withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected Invention/species, there being no allowable generic or linking claim.

Applicant's amendment necessitates the species election set forth herein. A telephone call was made to Steve Highlander on 1/14/2011 to request an oral election to the species election requirement, but did not result in an election being made.

Claims 2-6, 8 and 19-24 are currently under requirement for species election set forth below.

### **Species Election**

This application contains claims directed to the following patentably distinct species:

Applicant is required to elect a specific antibody preparation as recited in the newly added claim limitations in independent claims 2 and 8 (e.g., monoclonal antibodies specific for a phosphorylcholine conjugate **OR** subfraction of human immunoglobulin selected for the ability to bind a phosphorylcholine conjugate).

The species listed above do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, the species lack the same or corresponding special technical features for reasons stated in the previous Restriction Requirement, mailed 05/12/2009 and reiterated herein.

The shared feature of the present invention is treating atherosclerosis with anti-phosphorylcholine (PC) antibody. The shared feature does not contribute over prior art because it is obvious in view of Rose et al. (*Nature Medicine* 2003, 9:641-642, cited on IDS). Rose et al. proposed a role for PC-specific autoantibodies in slowing the progression of atherosclerosis by binding to oxidized low-density lipoprotein in the

circulation; thereby clearing it from the circulation and making it unavailable for plaque formation (see Figure 1). Upon reading the teaching by Rose et al, one of ordinary skill in the art would have been motivated to treat atherosclerosis with anti-PC antibody. Furthermore, one of ordinary skill would have reasonable expectation of success because antibody treatment has been well-established in the art at the time of the invention was made. Therefore, the shared feature of the present invention was prima facie obvious to one of ordinary skill in the art and thus does not contribute over prior art.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species, or a single grouping of patentably indistinct species, for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable.

**Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species or a grouping of patentably indistinct species to be examined** even though the requirement may be traversed (37 CFR 1.143) **and (ii) identification of the claims encompassing the elected species or grouping of patentably indistinct species**, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

The election may be made with or without traverse. To preserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the election of species requirement, the election shall be treated as an election without traverse. Traversal must be presented at the time of election in order to be considered timely. Failure to timely traverse the requirement will result in the loss of right to petition under 37 CFR 1.144. If claims are added after the election, applicant must indicate which of these claims are readable on the elected species or grouping of patentably indistinct species.

Should applicant traverse on the ground that the species, or groupings of patentably indistinct species from which election is required, are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing them to be obvious variants or clearly admit on the record that this is the case. In either

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instance, if the examiner finds one of the species unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other species.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which depend from or otherwise require all the limitations of an allowable generic claim as provided by 37 CFR 1.141.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to SHARON WEN whose telephone number is (571)270-3064. The examiner can normally be reached on Monday-Thursday, 8:30AM-5:00PM, EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ram Shukla can be reached on (571)272-0735. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Sharon Wen/  
Primary Examiner, Art Unit 1644  
January 14, 2011